APPENDICES

APPENDIX A

[Filed 2-9 1995]

IN THE CIRCUIT COURT
OF CLARKE COUNTY, ALABAMA

Civil Action No. CV-94-60K

LILLIAN P. ANDREWS, individually and as Attorney-in-fact for MINNIE MAY PUGH,
Plaintiffs,

vs.

WILLIE E. SHEFFIELD and
JAMES A. TUCKER, JR.,

JUDGMENT

This action came on for trial before the Court and a jury, the Honorable Charles C. Partin presiding, and the issues having been duly tried, and the jury finding as follows:

1. Judgment is hereby rendered that Lillian P. Andrews and Minnie May Pugh, Plaintiffs, were in the peaceable possession of the property described hereinbelow, that no suit was pending to enforce or test the validity of their title to said lands, and that the Defendant, Willie E. Sheffield, has no title, claim or interest in the property described hereinbelow.

2. Judgment is hereby further rendered that the Plaintiff, Lillian P. Andrews, recover of the Defendants, James A. Tucker, Jr., and Willie E. Sheffield, the sum of Ten Dollars ($10.00) compensatory damages and Two Million Dollars ($2,000,000.00) punitive damages.

3. Judgment is hereby further rendered in favor of the counter-defendant, Lillian P. Andrews, and against the counter-plaintiff, Willie E. Sheffield, on Counts One and Two of the counter-claim for detinue.

4. Judgment is hereby further rendered in favor of the counter-defendant, Lillian P. Andrews, and against the counter-plaintiff, Willie E. Sheffield, on Count Three of the counter-claim for breach of contract.

5. Further, the Court retains jurisdiction to empanel another jury to determine the remaining issues which are:

A. Count Four and Count Five of Plaintiffs' Third Amended Complaint, which are respectively civil theft and for money had and received against Defendant, James A. Tucker, Jr.

B. Count Four and Count Five of Defendant, Willie E. Sheffield's cross-claim which are, respectively, for civil theft and money had and received against Defendant, James A. Tucker, Jr.

It appearing to the Court that there is no just reason for delaying the entry of final judgment, it is therefore ORDERED, ADJUDGED and DECREED as follows:

1. That Plaintiffs, Lillian P. Andrews and Minnie May Pugh, own the following-described property in fee simple, absolute, free and clear of the claims of Willie E. Sheffield:

Gordon-Pugh-Hearn Lands:

NE ¼ of NW ¼, except seven acres in the Northeast corner heretofore conveyed to Sandy Pugh; SE ¼ of NW ¼ of NW ¼; E ½ of SW ¼ of NW ¼; SE ¼ of NW ¼; S. ½, less and except the S ½ of SW ¼ of SW ¼; all in Section 27, Township 9 North, Range 2 East.

All that part of the NE ¼ of NE ¼ of Section 34, Township 9 North, Range 2 East, lying North of Tattilaba Creek.

Isaac Pugh Lands:

The Northeast Quarter of the Northwest Quarter of Section 2, Township 8 North, Range 2 East; The Northwest Quarter of the Northeast Quarter of Section 2, Township 8 North, Range 2 East;

J. T. Pugh and Carrie G. Pugh Lands:

The Northwest Quarter of the Northwest Quarter of Section 2, Township 8 North, Range 2 East; The Southwest Quarter of the Southwest Quarter; the South Half of the Northwest Quarter of the Southwest Quarter, Section 35; The Northeast Quarter of the Southeast Quarter of Southeast Quarter of Section 34 all in Township 9 North, Range 2 East, containing 110 acres, more or less.

All that part of the East Half of the Northeast Quarter which lies South of Tattillaba Creek; All of the East Half of the Southeast Quarter except that portion thereof which lies South of the Coffeeville and Grove Hill Highway and West of King's Institute Road; all in Section 34, Township 9 North, Range 2 East. Also, all that part of the Southwest Quarter of Section 35, Township 9 North, Range 2 East, formerly owned by A. V. Gordon and/or her husband W. M. Gordon.

LESS AND EXCEPT:

Commencing at the Northwest corner of the Northeast Quarter of the Southeast Quarter of Section 34, Township 9 North, Range 2 East; thence run South 1241 feet to a stake on the North margin of U.S. Highway No. 84; thence run South 86 degrees 50 minutes East, along the North margin of said Highway 291.5 feet to a pipe at the corner of a fence, the point of beginning of a Lot or parcel to be herein described and conveyed; thence North 420 feet; thence East 1064 feet to a pipe on the West

margin of Kings Institute Road, also known as the Old Grove Hill-Coffeeville Road; thence along the West margin of said road South 25 degrees West 98.5 feet; thence South 40 degrees West 122.2 feet; thence South 47 degrees 55 minutes West 410 feet to the North margin of said U.S. Highway No. 84; thence along the North margin of said Highway North 86 degrees 50 minutes West 640 feet to the point of beginning. Containing 8.25 acres, more or less, and being a part of the Northeast Quarter of the Southeast Quarter of Section 34, and a part of the Northwest Quarter of the Southwest Quarter of Section 35, all in Township 9 North, Range 2 East.

Reference: Book 598, Page 622.

2. That the instruments recorded in the Office of the Judge of Probate of Clarke County, Alabama, by Willie E. Sheffield, in Book 942, Pages 067 and 068, and Book 942, Pages 069 and 070, be marked "CANCELLED and VOID", and that they are void and of no force and effect.

3. That a copy of the Judgment be recorded in the Office of the Judge of Probate of Clarke County, Alabama, and be indexed in both the reverse and direct indexes of the real property records. Said judgment shall be recorded in the direct index as from Willie E. Sheffield and James A. Tucker, Jr., to Lillian P. Andrews and Minnie May Pugh. Said judgment should be recorded in the reverse index as to Lillian P. Andrews and Minnie May Pugh from Willie E. Sheffield and James A. Tucker, Jr.

4. That the Clerk of the Circuit Court of Clarke County, Alabama, shall retain possession of the certificate of deposit now in his hands until the expiration of forth-two (42) days from the entry of Judgment by the Court or until the expiration of forty-two (42) days from the date of the Court's ruling on any post-judgment motions

that may be filed, or until an appellate court of appropriate jurisdiction has entered a final judgment with respect to any appeal.

5. James A. Tucker, Jr., shall immediately take all necessary steps to endorse the certificate of deposit being held by the Clerk of the Circuit Court of Clarke County, Alabama.

6. Judgment is hereby entered in favor of the Plaintiff, Lillian P. Andrews and against the Defendant, Willie E. Sheffield, and against the Defendant, James A. Tucker, Jr., in the amount of Ten Dollars ($10.00) compensatory damages and Two Million Dollars ($2,000,000.00) punitive damages, for a total money judgment of Two Million Ten Dollars ($2,000,010.00), for which let execution issue.

7. Judgment is hereby entered in favor of the counter-defendant, Lillian P. Andrews, and against the counter-plaintiff, Willie E. Sheffield, on Count One of the counter-claim filed by Defendant, Willie E. Sheffield.

8. Judgment is hereby entered in favor of the Plaintiff/counter-defendant, Lillian P. Andrews, and against the Defendant/counter-plaintiff, Willie E. Sheffield, as to Count Two of Defendant, Willie E. Sheffield's counter-claim for detinue.

9. Judgment is hereby entered in favor of the Plaintiff/counter-defendant, Lillian P. Andrews, and against the Defendant/counter-plaintiff, Willie E. Sheffield, as to Count Three of Defendant, Willie E. Sheffield's counter-claim for breach of contract.

10. The costs of court are hereby taxed against the Defendants, Willie E. Sheffield and James A. Tucker, Jr.

11. The Court expressly retains jurisdiction to empanel a new jury to try the remaining issues contained in Count Four and Count Five of the cross-claim filed by Defendant, Willie E. Sheffield, against Defendant, James A.

Tucker, Jr., and the civil theft count of Plaintiff, Lillian P. Andrew's Complaint against Defendant, James A. Tucker, Jr.

DONE this 8th day of February, 1995.

/s/ Charles C. Partin
CHARLES C. PARTIN
Circuit Court Judge

APPENDIX B

IN THE CIRCUIT COURT
OF CLARKE COUNTY, ALABAMA

Case No. CV-94-060.00 K

LILLIAN P. ANDREWS, *et al*,
Plaintiffs,

vs.

WILLIE E. SHEFFIELD, *et al*,
Defendants.

ORDER ON MOTION FOR A NEW TRIAL

This matter came for a hearing on the defendant, Willie E. Sheffield's, motion for a new trial, or in the alternative motion for judgment NOV filed after the entry of judgment on the jury's verdict of $2,000,010.00. The defendant, James A. Tucker, Jr., filed no post judgment motion. A hearing was conducted on May 22, 1995. The parties had agreed in writing that the time for the court to rule on the post judgment motion would be extended. Upon consideration of the foregoing, the court is of the opinion that the following order is due to be entered. It is therefore ORDERED, ADJUDGED and AGREED by the Circuit Court of Clarke County, Alabama, as follows:

1. The court determines that there was sufficient evidence of a conspiracy entered in to by the defendants to commit a fraud on Lillian P. Andrews.

2. The court determines that the defendant Willie E. Sheffield was not entitled to have the plaintiffs elect between either recision or a claim for damages, and that the court properly followed the holding of the *Mid-State Homes v. Johnson*, 294 Ala. 59, 311 So.2d 312 (1975).

3. The court further determines that it properly allowed testimony concerning the value of property owned by the plaintiffs and that the court properly instructed the jury with respect to an award of compensatory damages.

4. The court further determines that the plaintiff's counsel did not engage any improper argument during the closing statement and that the court properly submitted the question of mental anguish to the jury.

5. The court finds and determines that there was clear and convincing evidence justifying the award of punitive damages in this case. The court considered extensive testimony touching on the factors enunciated in *Hammond v. City of Gadsden*, 539 So.2d 218 (Ala. 1986) and *Green Oil Company v. Hornsby*, 539 So.2d 218 (Ala. 1989). It now sets forth its analysis of each factor.

A. REASONABLE RELATIONSHIP TO THE HARM THAT HAS ACTUALLY OCCURRED AND THE HARM THAT IS LIKELY TO OCCUR. The court concludes from the evidence that the harm caused by the defendants' conspiracy was grievous. The fraudulent scheme, had the plaintiffs died, would have transferred the bulk of each estate to the defendant Sheffield, depriving charitable entities of substantial assets.

B. REPREHENSIBLY OF THE DEFENDANTS CONDUCT. The defendant James Tucker committed the ultimate defalcation of an attorney, the betrayal of the client's trust. The defendant Willie Sheffield was the moving force in the betrayal of Lillian P. Andrews. Defendant Sheffield's conduct tears at the fabric of our civil justice system. There is no question that defendant Sheffield knew that his conduct would cause harm and he proceeded to cause the lawyer to sell his client out for $15,000.00. The court determines that there was an attempted cover-up of the fraud in that the deeds were kept off record

until near the very end when the fraud had been discovered. There is not significant evidence that either defendant had committed similar acts in the past.

C. EFFORTS TO REMEDY THE WRONG. The court determines that the defendant Sheffield at no time attempted to remedy the wrong. Significantly, the plaintiffs' counsel has represented to the court that the week before the trial commenced, the plaintiffs offered to settle the entire case if the defendant would execute the necessary documents to release any claim that he may have to the plaintiff's property. The defendant refused to do so and proceeded to trial.

D. THE PROFITABILITY TO THE DEFENDANT. This factor like many others, is difficult to ascertain in this case because the defendant Sheffield would have benefited only in the future after Mrs. Andrews' death. However, the judgment requiring the recision of the transaction would divest the defendant Sheffield of any profit in this case.

E. THE FINANCIAL CONDITION OF THE DEFENDANT. Of all of the Hammond-Green Oil factors, the financial position of the defendant in this case is the most important factor. Relatively few Alabama cases have considered the reduction of punitive damages against an individual defendant. Most of the reported decisions focus on the financial position of a corporate defendant. The court is of the opinion that the defendant does not have the assets to pay a $2,000,000.00 punitive damage judgment. There is testimony tending to show the defendant has undervalued his real estate holdings by approximately 50%. Moreover, the court does not believe the defendant's testimony that he lost or misplaced $500,000.00 after becoming intoxicated in Biloxi, Mississippi. The court knows that there

is an excess of $400,000.00 on deposit with the Clerk of the Circuit of Clarke County, Alabama. The court determines that the defendant Sheffield's assets are probably worth between $1,225,000.00 and $1,500,000.00. This factor weights heavily in favor of a remittitur of the verdict for punitive damages.

F. THE COST OF LITIGATION. The cost of litigation in this case does not appear to be above average and is not a significant factor in favor of a remittitur.

G. CRIMINAL SANCTIONS. There is pending, at the present time, a criminal indictment charging the defendant Sheffield with illegal activity related to this transaction. The court has not reviewed the criminal files and does not have an opinion as to the likelihood of a successful prosecution. However, the defendant will incur additional expenses in connection with the criminal action.

H. OTHER CIVIL ACTIONS. There are no other civil actions that could be brought against the defendant Sheffield for the wrong doing involved in this case.

I. COMPARATIVE CASES. The trial court is not in the position to make comparisons to other cases. However, the defendant Sheffield strongly argues that the punitive damages are all out of proportion to the compensatory damages of $10.00. The undersigned judge is of the opinion that there should be no logical connection between the amount of compensatory damages awarded and the amount of punitive damages. An act as despicable as this fraudulent conspiracy should be severly punished notwithstanding the fact that the discovery of the conspiracy was successfully thwarted, and the plaintiffs have, or will receive a recision of all of the fraudulent transactions.

6. This court concludes that the punitive damages verdict rendered in this case was not due to any bias, passion, prejudice, corruption or improper motive on the part of the jury. However, the Alabama Supreme Court has determined that a punitive damage award may be excessive if it exceeds an amount necessary to accomplish the the purposes of punitive damages. The jury in this case did not have access to any testimony concerning the defendants' financial conditions. Such evidence should not be taken into account by the jury in reaching an award of punitive damages. The court has had the benefit of testimony presented by the plaintiffs concerning the defendant Sheffield's financial condition as well as information provided by the defendant. To sustain the verdict for punitive damages awarded by the jury would clearly exceed the value of the defendant Sheffield's total holdings, even taking the plaintiff's evidence in its most favorable light. Therefore, the court concludes that a remittitur of a portion of the punitive damages is in order in this case.

7. There was evidence from which the jury could find, by a clear and convincing standard, that the defendants entered into a conspiracy to defraud the plaintiffs and would have been successful had the plaintiff died prior to the discovery of the fraud. Therefore, the court denies the defendant Willie Sheffield's motion for a new trial on the express condition that the plaintiffs accepts a remittitur of $1,000,000.00 within 30 days of the date of this decree. All other aspects of the post judgment motion are denied.

DONE this the 14th day of June, 1995.

/s/ Charles C. Partin
Circuit Judge

APPENDIX C

[Filed Apr. 16, 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUHERN DIVISION

Civil Action 96-0140-P-S

IN RE: WILLIE E. SHEFFIELD,
Debtor,

LILLIAN P. ANDREWS, Individually and
as Attorney-in-Fact for Minnie May Pugh,
Plaintiff-Appellee,

v.

WILLIE E. SHEFFIELD,
Defendant-Appellant.

JUDGMENT

It is ORDERED, ADJUDGED, and DECREED that the Bankruptcy Court's grant of summary judgment for plaintiff-appellee, Lillian P. Andrews, Individually and as Attorney-in-fact for Minnie May Pugh, be and is hereby AFFIRMED as amended, and that the Bankruptcy Court's denial of discharge pursuant to 11 U.S.C. § 727(a)(5) be and is hereby AFFIRMED. Costs taxed to defendant-appellant, Willie E. Sheffield.

DONE this 16th day of April, 1996.

/s/ [Illegible]
Senior United States
District Judge

Judgment Entered on Docket

Date April 17, 1996
Deborah S. Hunt

APPENDIX D

[Released Apr. 12, 1996]

SUPREME COURT OF ALABAMA

OCTOBER TERM, 1995-96

1941693

WILLIE E. SHEFFIELD

v.

LILLIAN P. ANDREWS and MINNIE MAY PUGH

Appeal from Clarke Circuit Court
(CV-94-060)

COOK, JUSTICE.

Willie E. Sheffield appeals from a judgment awarding Lillian P. Andrews, individually, and as attorney in fact for her sister, Minnie May Pugh, who is incapacitated, $10 in compensatory damages and $1,000,000 in punitive damages on Andrews's claim that Sheffield and Andrews's former attorney, James Tucker, were part of a conspiracy to defraud her and her sister out of their property. Andrews, who was 91 years old at the time, alleges that Sheffield paid Tucker $15,000 to obtain title to property owned by Ms. Andrews and her sister and that Tucker did so by misrepresenting to Ms. Andrews, who had poor eyesight, the content of certain documents signed by her.

Those documents purported to transfer Andrews's property interest to Sheffield. After Andrews signed the documents, she cut timber on the property twice and executed a hunting lease on the property. Tucker, in an attempt to stop the timber cuttings, informed Andrews that she would have tax problems if she continued to cut timber; Sheffield attempted to circumvent the hunting lease by offering to purchase it from the lessee for $10,000.

In addition, Tucker, unknown to Andrews, added to a will he prepared for Andrews language stating that upon Andrews's death, the property, valued at well over $1,000,000, would be sold to Sheffield for $250,000 or $500,000, depending on the interest owned by Ms. Andrews. The price was dependent on whether Andrews, at the time of her death, had inherited the interest of her sister, Ms. Pugh. Sheffield, thereafter, deposited $428,000 with Tucker for payment to Andrews's estate upon her death. Tucker put $400,000 in a certificate of deposit in trust for Sheffield and apparently spent the remaining $28,000. Andrews did not know about the money and never received any benefit therefrom. Upon learning that Sheffield claimed title to her property based on the documents signed by her, Andrews sued, seeking to quiet title to the property and seeking damages, alleging that Sheffield and Tucker were guilty of fraud.

The jury returned a verdict of $10 in compensatory damages and $2,000,000 in punitive damages. Following a *Hammond* hearing, the trial court reduced the punitive damages award to $1,000,000. On appeal, Sheffield contends that Andrews should not have been permitted to "rescind" the alleged contract and at the same time collect punitive damages for fraud. He claims that these remedies are inconsistent and that Andrews should be forced either to rescind the agreement and collect no punitive damages or to affirm the contract and be allowed to seek punitive damages. He further argues that the verdict should have been reduced by significantly more than $1,000,000, be-

cause, he argues, his net worth is only $720,000. We disagree with each of Sheffield's contentions and affirm the judgment of the trial court.

> "It is well settled under Alabama law that a plaintiff may present alternative, inconsistent, and mutually exclusive claims to the jury. *King v. Cooper Green Hospital*, 591 So.2d 464, 465-66 (Ala. 1991). However, the plaintiff may recover under only one of these claims. *United States Fidelity & Guaranty Co. v. McKinnon*, 356 So.2d 600, 607 (Ala. 1978)."

Liberty National Life Insurance Co. v. Jackson, 603 So.2d 1005, 1007 (Ala. 1992). The question here is whether the remedies in this case are, in fact, inconsistent, as argued by Sheffield; in other words, we must decide whether Andrews can collect damages for fraud *and* rescind the real estate conveyance. For the following reasons, we conclude that these remedies are not inconsistent.

In *Mid-State Homes, Inc. v. Johnson*, 294 Ala. 59, 66, 311 So.2d 312, 318 (Ala. 1975), this Court held that "where one rescinds a contract induced by fraud and recovers even nominal damages, then in an appropriate case he may also recover punitive damages. "The Court, quoting with approval *Ward v. Taggart*, 51 Cal.2d 36, 336 P.2d 534 (1959), stated:

> " 'Courts award exemplary damages to discourage oppression, fraud, or malice by punishing the wrongdoer. . . . Such damages are appropriate in cases . . . where restitution would have little or no deterrent effect, for wrongdoers would run no risk of liability to their victims beyond that of returning what they wrongfully obtained. . . .'
>
> "We agree with this reasoning. Punitive damages are for punishment and prevention. To allow them when a contract is affirmed, and not when there

> is a rescission, is illogical when the purposes of punitive damages are considered. The punitive and deterrent force of the law should be present in both types of cases since both arise from perpetration of fraud."

Mid-State Homes, Inc. v. Johnson, 294 Ala. at 66, 311 So.2d at 318. Andrews contends that the facts of this case bring it within the holding in *Mid-State*, supra. In particular, she argues that forcing her to elect between remedies would, in effect, allow Sheffield to perpetrate fraud and " 'run no risk of liability to [his victim, Andrews] beyond that of returning what [he had] wrongfully obtained.' " *Mid-South State Homes, Inc. v. Johnson*, 294 Ala. at 66, 311 So.2d at 318, quoting *Ward v. Taggart*, 51 Cal.2d 36, 336 P.2d 534.

The documents purporting to transfer the property from Andrews to Sheffield were void because of the fraud of Sheffield and Tucker. See *Cumberland Capital Corp. v. Robinette*, 331 So.2d 709 (Ala.Civ.App. 1976), wherein the court stated:

> "[I]t is apparent from the record that the signatures of the grantors . . . were placed upon the deeds either by forgery or by the grantors' having been deceived into signing the instruments in ignorance of their true character. A signature procured by this character of fraud is considered forged under Alabama law. *Warren v. State*, 247 Ala. 595, 25 So.2d 698. See also 11 A.L.R. 3d 1076. A forged deed is void, and completely ineffectual to pass title. 23 Am.Jur.2d *Deeds* §§ 137, 139, and cases cited thereunder.
>
> "Even if the signatures are not forged, or considered as such under the rule enunciated in the *Warren* case, supra, a deed is nonetheless absolutely void where the grantor's signature is obtained by fraud going to the nature of the instrument he was

requested to sign. *Gamble v. Moore,* 248 Ala. 104, 176 So.2d 35; 23 Am.Jur.2d *Deeds* § 142, and cases cited thereunder."

331 So.2d at 713. In finding for Andrews on the fraud count, the jury determined that because of Sheffield and Tucker's fraud, there was *no* agreement between Andrews and Sheffield for the purchase of her property. Thus, the remedy of voiding the "agreements" is not inconsistent with an award of punitive damages for the fraud perpetrated by Sheffield on Andrews.

Finally, Sheffield contends that the trial court should have remitted the punitive damages award by more than $1,000,000 because, he claims, his estate in not large enough to pay such a significant verdict. Should he be required to do so, he claims, he will be financially destroyed. The trial judge, in his order remitting the verdict by $1,000,000, stated:

"This matter came for a hearing on the defendant Willie E. Sheffield's motion for a new trial, or in the alternative motion for judgment NOV, filed after the entry of judgment on the jury's verdict of $2,000,010.00. The defendant James A. Tucker, Jr., filed no post-judgment motion. A hearing was conducted on May 22, 1995. . . .

". . . .

"The court finds and determines that there was clear and convincing evidence justifying the award of punitive damages in this case. The court considered extensive testimony touching on the factors enunciated in *Hammond v. City of Gadsden,* 539 So.2d 218 (Ala. 1986), and *Green Oil Co. v. Hornsby,* 539 So.2d 218 (Ala. 1989). It now sets forth its analysis of each factor.

"A. REASONABLE RELATIONSHIP TO THE HARM THAT HAS ACTUALLY OCCURRED AND THE HARM THAT IS

LIKELY TO OCCUR. The court concludes from the evidence that the harm caused by the defendants' conspiracy was grevious. The fraudulent scheme, had the plaintiff died, would have transferred the bulk of each estate to the defendant Sheffield, depriving charitable entities of substantial assets.

"B. REPREHENSIBILITY OF THE DEFENDANTS' CONDUCT. The defendant James Tucker committed the ultimate defalcation of an attorney, the betrayal of the client's trust. The defendant Willie Sheffield was the moving force in the betrayal of Lillian P. Andrews. Defendant Sheffield's conduct tears at the fabric of our civil justice system. There is no question that defendant Sheffield knew that his conduct would cause harm and he proceeded to cause the lawyer to sell his client out for $15,000.00. The court determines that there was an attempted cover-up of the fraud in that the deeds were kept off record until near the very end when the fraud had been discovered. There is not significant evidence that either defendant had committed similar acts in the past.

"C. EFFORTS TO REMEDY THE WRONG. The court determines that the defendant Sheffield at no time attempted to remedy the wrong. Significantly, the plaintiffs' counsel has represented to the court that the week before the trial commenced, the plaintiffs offered to settle the entire case if the defendant would execute the necessary documents to release any claim that he may have to the plaintiff's property. The defendant refused to do so and proceeded to trial.

"D. THE PROFITABILITY TO THE DEFENDANT. This factor like many others, is difficult to ascertain in this case because the

defendant Sheffield would have benefited only in the future after Mrs. Andrew's death. However, the judgment requiring the rescission of the transaction would divest the defendant Sheffield of any profit in this case.

"E. THE FINANCIAL CONDITION OF THE DEFENDANT. Of all of the *Hammond-Green Oil* factors, the financial position of the defendant in this case is the most important factor. Relatively few Alabama cases have considered the reduction of punitive damages against an individual defendant. Most of the reported decisions focus on the financial position of a corporate defendant. The court is of the opinion that the defendant does not have the assets to pay a $2,000,000.00 punitive damages judgment. There is testimony tending to show the defendant has undervalued his real estate holdings by approximately 50%. Moreover, the court does not believe the defendant's testimony that he lost or misplaced $500,000.00 after becoming intoxicated in Biloxi, Mississippi. The court knows that there is in excess of $400,000.00 on deposit with the clerk of the Circuit [Court] of Clarke County, Alabama. The court determines that the defendant Sheffield's assets are probably worth between $1,225,000.00 and $1,500,000.00. This factor weighs heavily in favor of a remittitur of the verdict for punitive damages.

"F. THE COST OF LITIGATION. The cost of litigation in this case does not appear to be above average and is not a significant factor in favor of a remittitur.

"G. CRIMINAL SANCTIONS. There is pending, at the present time, a criminal indictment charging the defendant Sheffield with il-

legal activity related to this transaction. The court has not reviewed the criminal files and does not have an opinion as to the likelihood of a successful prosecution. However, the defendant will incur additional expenses in connection with the criminal action.

"H. OTHER CIVIL ACTIONS. There are no other civil actions that could be brought against the defendant Sheffield for the wrongdoing involved in this case.

"I. COMPARATIVE CASES. The trial court is not in the position to make comparisons to other cases. However, the defendant Sheffield strongly argues that the punitive damages are all out of proportion to the compensatory damages of $10.00. The undersigned judge is of the opinion that there should be no logical connection between the amount of compensatory damages awarded and the amount of punitive damages. An act as despicable as this fraudulent conspiracy should be severely punished notwithstanding the fact that the discovery of the conspiracy was successfully thwarted, and the plaintiffs have [received], or will receive, a rescission of all of the fraudulent transactions."

C.R. at 549-54. In considering Sheffield's argument that the verdict should have been reduced by substantially more than $1,000,000, we note that Sheffield presented evidence tending to show that his estate was value at only $720,000. The trial court, however, did not accept the value Sheffield placed on his assets and, in its order, found that Sheffield had, in fact, underestimated those assets by 50%. In addition, the trial court did not believe testimony offered by Sheffield with regard to $500,000 that had been on deposit when the judgment was entered. That testimony was as follows:

"Q. Now, at the time the judgment was entered, did you have any sums of money in accounts with your name on them other than what you've listed in this [affidavit]?

"A. I can't say what was in there at the time because I spend money every day. I can't tell you what was in there at that time because I don't recall exactly what day it was or what not that I spent it. I think there was probably a little bit more money in each one of them. I don't know.

"Q. Have you withdrawn any money from any account since the day the judgment was entered?

"A. Yeah.

"Q. Have you withdrawn any large sums of money from any account, over a hundred thousand dollars, since the judgment was entered?

"A. I can't understand the question you're asking.

"Q. The question is, have you withdrawn any large sums of money from any account since the date the judgment was entered?

"A. From any account?

"Q. Yes.

"A. Yeah.

". . . .

Q. You withdrew a half million dollars from two CD's; is that correct?

"A. That's correct.

"Q. You withdrew it?

"A. I withdrew it, because it was in [my grandchildren's names], and the bank wouldn't let them have it.

"Q. And it's your testimony that you went to the boat—

"A. I first went to Florida and bought some lottery tickets. Then I went to the boat; and when I come to, I was in my truck and didn't have nothing.

"Q. So that money is just gone?

". . . .

"Q. So since the time of the judgment and before filing this affidavit, you have blown a half million dollars at the boat and on lottery tickets?

"A. I can't say I blown it now. It could have been stolen. I couldn't tell you.

"Q. You [had] it and now it's gone?

"A. It's gone. That's correct."

R.T. at 900-03. Sheffield testified that $500,000 of his money had been "lost or stolen" while he was on a gambling junket between the day the judgment was entered and the day he filed his affidavit. The trial court did not believe Sheffield's explanation of the whereabouts of the missing funds.

The record contains evidence that Sheffield attempted to hide his assets from the court by transferring assets to family members or by suggesting that the assets had been "lost or stolen"; there is evidence that Sheffield stood to gain much from his fraudulent activities had they not been discovered; and there is evidence that Sheffield paid Tucker $15,000 to obtain title to the property for him, knowing that Ms. Andrews knew nothing of the alleged conveyance of her land. The evidence was sufficient to sustain the punitive damages award as remitted.

AFFIRMED.

Hooper, C.J., and Almon, Shores, Houston, Kennedy, Ingram, and Butts, JJ. concur.

APPENDIX E

IN THE SUPREME COURT OF ALABAMA

Case Number 1941693

WILLIE E. SHEFFIELD,
Appellant,

v.

LILLIAN P. ANDREWS, individually and as attorney-in-fact for Minnie May Pugh,
Appellee.

NOTICE OF NEW AUTHORITY AND REQUEST FOR PERMISSION TO SUBMIT SUPPLEMENTAL BRIEF

The defendant-appellant Willie E. Sheffield ("Sheffield") submits the attached opinion in *BMW of North America Inc. v. Gore,* [No. 94-986, May 20, 1996], —— U.S. —— (1996), *rev'g, BMW of North America Inc. v. Gore,* 646 So.2d 619 (Ala. 1994), which was decided by the United States Supreme Court after Sheffield's application for rehearing had been briefed, in support of his argument on application for rehearing that this court erred in affirming the $1,000,000 punitive damages award in this case. Based upon the Supreme Court's decision in *Gore,* Sheffield requests (i) that he be allowed to submit a supplemental brief in support of his application for rehearing that addresses the principles established by *Gore* as they apply to the propriety of the punitive damages award in this case and (ii) that a briefing schedule be established by this court within which the parties may submit supplemental briefs that address the applicability

and effect of *Gore* on the court's April 12 decision in this case.

Dated: June 7, 1996.

TURNER, ONDERDONK, KIMBROUGH & HOWELL, P.A.
Attorneys for Defendant-Appellant, Willie E. Sheffield

By: /s/ Edward P. Turner Jr.
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Telephone: (334) 847-2237
Facsimile: (334) 847-3115

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on counsel of record by placing a copy of the same in the United States Mail, first-class postage prepaid and properly addressed, on this the 7th day of June 1996.

/s/ Halron W. Turner
HALRON W. TURNER

Counsel of Record:

Wyman O. Gilmore Jr., Esq.
Post Office Box 729
Grove Hill, Alabama 36451

F. Luke Coley Jr., Esq.
1110 Montlimar Drive, Suite 590
Mobile, Alabama 3660[illegible]

APPENDIX F

IN THE SUPREME COURT OF ALABAMA
JULY 19, 1996

1941693

WILLIE E. SHEFFIELD

v.

LILLIAN P. ANDREWS and MINNIE MAY PUGH

(Clarke: CV-94-060)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

COOK, J.—Almon, Shores, Houston, Kennedy and Ingram, JJ., concur; Hooper, CJ., Maddox and Butts, JJ., dissent.

[Released Jul. 19, 1996]

SUPREME COURT OF ALABAMA
SPECIAL TERM, 1996

1941693

WILLIE E. SHEFFIELD

v.

LILLIAN P. ANDREWS and MINNIE MAY PUGH

Appeal from Clarke Circuit Court
(CV-94-060)

ON APPLICATION FOR REHEARING

COOK, JUSTICE.

APPLICATION OVERRULED.

Almon, Shores, Houston, Kennedy, and Ingram, JJ., concur.

Hooper, C.J., and Maddox and Butts, JJ., dissent.

MADDOX, JUSTICE (dissenting).

I agree with Justice Butts's comments in his dissent, except that I would remit the punitive damages award to $250,000. I believe the award of $1,000,000 in punitive damages is "grossly excessive" and thus violates the

defendant's right to due process. *See, BMW of North America, Inc. v. Gore,* [Ms. 94-896, May 20, 1996] 517 U.S. ——, 116 S.Ct. 1589 (1996).

Hooper, C.J., concurs.

BUTTS, JUSTICE (dissenting)

I would grant Willie Sheffield's application for rehearing to review the issue whether the trial court's remittitur of the punitive damages award against Sheffield from $2,000,000 to $1,000,000 was sufficient to have the award comport with the requirements of due process. The jury found that Sheffield's misconduct was sufficient to impose the penalty of punitive damages, and I agree that punitive damages are warranted. However, after additional study, I have concluded that a further remittitur of the punitive damages award is required. Although the exact amount of Sheffield's net worth is highly disputed, even if it is as great as the plaintiff claims, $1,220,300, then I must conclude that the $1,000,000 punitive damages award "destroys" rather than "stings." See *Green Oil Co. v. Hornsby,* 539 So.2d 218, 222 (Ala. 1989). I believe a punitive damages award of $350,000 would accomplish "society's goals of punishment and deterrence." *id.*; thus, I would further remit the award to that amount.

APPENDIX G

THE STATE OF ALABAMA, CLARKE COUNTY CIRCUIT COURT

AUGUST TERM, 1994

No. 227

INDICTMENT

COUNT ONE:

The Grand Jury of said County charge that before the finding of this Indictment

Willie Elijah Sheffield,

whose name is otherwise unknown to the Grand Jury, did exploit, as defined in Section 38-9-2(9), Code of Alabama 1975, as amended, Lillian Andrews and Minnie Mae Pugh, whose names are to the Grand Jury otherwise unknown than as stated and who are adults in need of protective services, as defined in Section 38-9-2(1), Code of Alabama 1975, as amended, by causing the title to lands owned by said Lillian Andrews and Minnie Mae Pugh, to be encumbered or otherwise diminished in value in an amount in excess of One Hundred Dollars ($100.00), in violation of Section 38-9-7(g) Code of Alabama 1975, as amended, did conspire with James A. Tucker, Jr., whose name is to the Grand Jury unknown than as stated, to commit the crime of theft by deception, Section 13A-8-3 Code of Alabama 1975, as amended, with the intent that conduct constituting said offense be performed and that Willie Elijah Sheffield did cause to be recorded a document obtained by deception from Lillian Andrews, whose name is to the Grand Jury otherwise unknown than as stated, a document known to the Grand Jury as an Agreement to Convey Interest to land owned by Lillian An-

drews, thereby depriving Lillian Andrews of property, the value of which exceeds One Thousand Dollars ($1,000) in furtherance of said crime and in violation of Section 13A-4-3, Code of Alabama, 1975, as amended, did knowingly obtain by deception property known to the Grand Jury as an Interest in Real Property, said property being of a value in excess of $1000.00 (one thousand dollars) and owned by Lillian Andrews, whose name is to the Grand Jury otherwise unknown than stated, with the intention of depriving said Lillian Andrews of said property, in violation of Section 13A-8-3 of the Code of Alabama, 1975, as amended, against the peace and dignity of the State of Alabama.

/s/ John P. Hagood
JOHN P. HAGOOD
Deputy Attorney General

APPENDIX H

IN THE CIRCUIT COURT OF CLARKE COUNTY, ALABAMA

Case No. CC-94-280

STATE OF ALABAMA,

Plaintiff

vs.

WILLIE ELIJAH SHEFFIELD,

Defendant

ORDER

The above-captioned matter was called to trial on the 19th day of June, 1996, said matter being tried before the Court without a jury, pursuant to the waiver of a constitutional right to trial by jury of the Defendant as set out in this Court's prior order of November 15, 1995; and appearing at the trial of this matter for the State of Alabama was its Assistant Attorney General, Bruce Lieberman, and the Defendant appearing with his attorney of record, Thomas H. Haas.

In the trial of this matter the Court heard live testimony from Lillian P. Andrews, Robert Bowling, Pauline Sheffield, and Robert Keahey. Also, presented to this Court, by agreement, were transcripts of the testimony of Jimmy Tucker, Teresa Marshall, and the Defendant, Willie Elijah Sheffield, presented in Clarke County civil case number CV-94-060M. Furthermore, stipulations were entered into the record concerning testimony of William Wright and Dr. Steven Furr.

Upon consideration of all the above, including oral arguments of counsel, it is the opinion of the Court that

the State of Alabama has met its burden of proof as to Count Three contained in this indictment, and the Court consequently finds the Defendant guilty as to Count Three contained in the indictment.

As a result of the Court's finding of guilt as to Court Three of the indictment, the Court finds the Defendant not guilty as to Count Two of the indictment.

Furthermore, the Court is not satisfied that the State of Alabama has met its burden of proof as to Count One of the indictment as the only testimony presented by the State of Alabama concerning Lillian Andrews' physical impairment, *during 1991 and 1992*, was that her eyesight was "impaired." The extent of the impairment, whether it was a minor impairment or whether there was severe impairment, was not shown. Consequently, as to Count One of the indictment, the Court finds the Defendant not guilty. The Court finds for the Defendant as to Count Two of the indictment.

It is the ORDER of this Court that a presentence investigation and report be conducted by the Clarke County Probation and Parole Officer assigned to this case, said report to be submitted within twenty-one 21 days of this Order. A sentence hearing is set for Tuesday, July 30, 1996, at 9:00 A.M.

DONE this 24th day of June, 1996.

/s/ J. Lee McPhearson
J. LEE MCPHEARSON
Circuit Judge

[Filed Aug. 2, 1996]

APPENDIX I

IN THE CIRCUIT COURT
FOR CLARKE COUNTY, ALABAMA

Criminal Action No. CC-94-280

STATE OF ALABAMA,

Plaintiff,

v.

WILLIE E. SHEFFIELD,

Defendant.

SENTENCING ORDER

THIS the 10th day of July, 1996, came the defendant in open court, together with his attorney of record, Thomas M. Haas, and also came the Assistant Attorney General, Bruce Lieberman, for a sentence hearing in this cause;

AND the Court having heretofore, on the 24th day of June, 1996, adjudged the defendant guilty of the offense of Theft of Property, 1st Degree, as charged in Count 3 of the indictment;

AND the Court having reviewed the pre-sentence investigation prepared by the State of Alabama Probation and Parole Officer, Joseph Franklin, and having heard comments and arguments of the attorneys.

THE defendant being in open court and asked by the Court if he had anything to say why the sentence of law should not now be pronounced against him, had his say.

It is therefore ORDERED by the Court that the defendant is sentenced to the custody of the Department of

Corrections of the State of Alabama for a term of five (5) years. The Court Orders, pursuant to the Alabama Split-Sentence Act, that this five (5) year sentence be split, and the defendant shall serve twelve (12) months at a work release center in Loxley, Atmore or Mobile, Alabama, the location of which shall be determined by the Department of Corrections of the State of Alabama. The twelve (12) month portion of this sentence shall begin once the defendant completes or is released from Federal custody imposed by the Federal Bankruptcy Court in Mobile, Alabama. Upon completion of the twelve (12) month portion of this sentence, the balance of the five (5) years shall be suspended, and the defendant placed on probation for five (5) years. The conditions of the defendant's probation shall be his good behavior and any other terms set out by his probation officer, to include the following special conditions:

1. Prior to receiving any deeds or executing contracts for the acquisition of any real property, the defendant shall notify his probation officer of the fact and terms of the transaction, which shall then be submitted by his probation officer to the Office of the Attorney General of the State of Alabama or the District Attorney's Office of the 1st Judicial Circuit of Alabama for review.

2. That the defendant shall have no further direct/indirect contact or communication with Lillian P. Andrews, James A. Tucker, Jr., Robert Bowling, Wyman O. Gilmore, Jr. or any third party who may have testified adversely to the defense in this cause, to the defense in the civil action surrounding these charges or in the Federal Bankruptcy action in Mobile, Alabama.

It is further ORDERED that the defendant shall pay a One Thousand Dollar ($1,000.00) assessment to the Alabama Crime Victims' Compensation fund, plus the court costs in this matter.

It is further ORDERED that upon a showing to this Court that the defendant has purged himself of the Federal Contempt Citation he is presently under, this Court shall review this matter as to a possible reduction of any incarceration ordered herein.

THE defendant haven given oral notice of appeal, the defendant's appeal bond is set at Twenty-Five Thousand Dollars ($25,000.00), conditioned upon approval of the bond by the Circuit Clerk of Clarke County, Alabama. Further, it is the Order of this Court that the execution of the sentence imposed hereinabove be suspended, pending the outcome of the defendant's appeal to the Court of Criminal Appeals of the State of Alabama.

DONE this the 1st day of August, 1996.

/s/ J. Lee McPhearson
J. LEE MCPHEARSON
Circuit Judge

APPENDIX J

IN THE CIRCUIT COURT
OF CLARKE COUNTY, ALABAMA

CV-94-060 (K)

LILLIAN P. ANDREWS, *et al.*,
Plaintiffs,

v.

WILLIE E. SHEFFIELD, *et al.*,
Defendants.

AFFIDAVIT OF WILLIE E. SHEFFIELD

BEFORE ME, the undersigned notary public in and for the State of Alabama at large, personally appeared WILLIE E. SHEFFIELD, who is known to me and who being by me first duly sworn, did depose and say on oath as follows:

1. My name is Willie E. Sheffield, and I am one of the defendants in the above-styled lawsuit. I am sixty years old and reside in Grove Hill, Alabama. I am making this affidavit in support of the consolidated postjudgment motion that I have filed in this case. The facts contained in this affidavit are based upon my personal knowledge, and if called as a witness at the hearing on my postjudgment motion, I could and would testify competently to the facts contained in this affidavit.

2. I am not employed at the present time. I receive approximately $590.00 per month in social security disability income and approximately $210.00 per month in producing oil and gas income.

3. The following constitutes an accurate statement of my current financial condition:

Assets

Nature	Amount
a. Real Property and Improvements	$465,300.00
b. Several Mineral Rights	$71,000.00
c. Personal Property	$29,000.00
d. Cash in Bank [1]	$400,000.00
Total Assets:	$965,300.00

Liabilities

Nature	Amount
a. Deferred Taxes on Valuations in Excess of Cost (Land)	$100,000.00
b. Deferred Taxes on Cash in Bank in Excess of Cost ($328,500.00 plus $80,000.00 in interest)	$120,000.00
c. Income Taxes Payable (1994 Estimated)	$10,000.00
d. Other Liabilities	$15,000.00
Total Liabilities:	$245,000.00

3. Based upon the financial information set forth in the preceding paragraph, my current financial net worth is approximately $720,300.00.

4. If I liquidated all of my assets, I would be unable to pay the judgment entered against me in this case.

5. Further, the Affiant sayeth not.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 27th day of February 1995.

/s/ Willie E. Sheffield
WILLIE E. SHEFFIELD
Affiant

[1] This cash constitutes the money I paid to the plaintiffs (less the $28,500.00 misappropriated by James A. Tucker Jr.) to purchase the real property made the subject of this lawsuit. This money is on deposit at Merchants Bank in Jackson, Alabama, and the clerk has possession of the certificate of deposit pursuant to the judgment of this court dated February 9, 1995. When the certificate of deposit matures on June 9, 1995, it will be worth approximately $480,000.00.

SWORN TO AND SUBSCRIBED before me on this the 27th day of February 1995.

/s/ Donna P. Erving
Notary Public

My Commission Expires: 3-29-98.

[Filed 2-27, 1995]

APPENDIX K

STATE OF ALABAMA *
COUNTY OF CLARKE *

AGREEMENT

This agreement entered into this the 15th day of May, 1992, by and between JAMES A. TUCKER, JR., First Party, and WILLIE E. SHEFFIELD, Second Party.

WHEREAS, Second party has paid unto First Party the sum of Four Hundred Twenty-Eight Thousand Five Hundred and no/100's Dollars ($428,000.00) in trust for the purpose of purchasing certain properties from Lillian P. Andrews, a client of the First Party, and,

WHEREAS, said money will be held in trust until such time as the conveyance of the properties is made.

W-I-T-N-E-S-S-E-T-H

Now therefore in consideration of the mutual covenants herein contained, the parties covenant and agree as follows:

1. That the sum of Four Hundred Twenty-Eight Thouand Five Hundred and no/100's Dollars ($428,000.00) will be placed in trust by the First Party on behalf of the Second Party for the purpose herein stated above.

2. That First Party will maintain said money in an interest bearing account and will pay any and all income taxes attributable to the interest earned on said money, with said interest, or will, if it should be more advantageous shall attribute the interest income to the Second Party who will then pay the appropriate income tax from said interest or from another source.

3. That the provisions of this agreement shall inure to the benefit of the heirs, executors, administrators and assigns of the parties hereto.

Signed on the day and date first above written.

/s/ James A. Tucker, Jr.
JAMES A. TUCKER, JR.
First Party

/s/ Willie E. Sheffield
WILLIE E. SHEFFIELD
Second Party

[Filed in Probate Office Clarke County Ala. April 29, 1994]

APPENDIX L

STATE OF ALABAMA
COUNTY OF CLARKE

AGREEMENT

THIS AGREEMENT entered into this the 2nd day of September, 1992, by and between LILLIAN P. ANDREWS, First Party, and WILLIE E. SHEFFIELD, Second Party,

WHEREAS the parties have heretofore entered into an agreement whereby Second Party is to purchase from the estate of First Party certain real property located in Clarke County, Alabama, and owned by the First Party, and

WHEREAS, Second Party has deposited in trust with the attorney for the First Party the sum of $428,500.00 to be used to purchase said real property, and

WHEREAS, the purchase price of said real property is to be $250,000.00 or $500,000.00 depending on the interest owned by First Party at the time of her death, and

WHEREAS, First Party has caused to be cut certain timber on said real property,

NOW THEREFORE, in consideration of the mutual covenants herein contained the parties agree as follows:

1. That First Party shall not cut or cause to be cut any additional timber from said real property.

2. That Second Party will leave the $428,500.00 deposited in trust with the attorney for First Party to be used for the Purchase of said real property.

3. that the purchase price of said property shall be adjusted downward to reflect the amount received by the

First Party for the timber already cut on said real property.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals on this the day first above written.

/s/ Lillian P. Andrews
LILLIAN P. ANDREWS
First Party

/s/ Willie E. Sheffield
WILLIE E. SHEFFIELD
Second Party

STATE OF ALABAMA
COUNTY OF CLARKE

I, the undersigned Notary Public in and for said County and State, do hereby certify that LILLIAN P. ANDREWS, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 2d day of September, 1992.

/s/ [Illegible]
Notary Public

STATE OF ALABAMA
COUNTY OF CLARKE

I, the undersigned Notary Public in and for said County and State, do hereby certify that WILLIE E. SHEFFIELD, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance,

he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 2d day of September, 1992.

/s/ [Illegible]
Notary Public

[Filed in Probate Office Clarke County Ala. April 29, 1994]

APPENDIX M

LAST WILL AND TESTAMENT
OF
LILLIAN P. ANDREWS

I, LILLIAN P. ANDREWS, a resident of the State of Alabama, Clarke County, being of sound mind and disposing memory, do hereby make, publish and declare this instrument as and for my Last Will and Testament, and hereby expressly revoke all wills and codicils heretofore made by me.

ARTICLE ONE

I direct that all my debts and funeral expenses and the costs of administration of my estate be paid as soon as practicable after my death.

ARTICLE TWO

After payment of my debts and funeral expenses, I will bequeath and devise all the rest, residue and remainder of my estate unto Doris Anderson and James A. Tucker, Jr. as Trustees to use said property or the income derived from the use or sale of said property for charitable purposes. In particular for use as scholarship for persons in Clarke County wishing to attend Huntington College and Livingston University or for any other charitable use my Trustees deem appropriate. I request that my Trustees deed my home and garden to the City of Jackson for use as accountings in any court but they shall nevertheless be authorized and empowered to make any settlements and accountings in any court of competent jurisdiction at any time or times when the Trustees in their discretion deem such a settlement or accounting to be reasonably necessary or advisable for the benefit of the trust or the Trustees and all reasonable fees and expenses of the trust or Trustees incident to such settlements or accountings shall be borne by the Trust. In any event, the Trustees shall

keep accurate records of all the trust assets of the nature and amount of all receipts and disbursements and of other transactions affecting the trust.

In addition to all other rights and powers conferred by law or elsewhere in this instrument, the Trustee of each trust created under this will is hereby accorded the rights and powers set out hereinafter in paragraphs (a) through (q) of this Item Four, and may exercise the same and act in accordance therewith without application to any court for leave or confirmation:

(a) To sell at public or private sale, for cash or on terms, to grant leases of every kind (including without limitation those relating to timber cutting or naval products) for periods within or beyond the duration of the trust, and to exchange all or any portion of said Trust Estate (including real, personal and mixed property) at such time, for such consideration, and upon such terms and conditions as the Trustees may deem advisable, all without liability on the other parties to see to the proper application of the proceeds, and to execute all instruments necessary or proper to effect or evidence such sale, lease or exchange.

(b) To grant and convey by lease or other instrument,

ARTICLE FOUR

I hereby direct my Executors and Trustees to transfer all the interest I own, at the time of the execution of this my Last Will and Testament, in the Gordon/Pugh/Hearn property and all lands heretofore acquired by me by inheritance, gift or otherwise from J. T. Pugh, Issac Pugh and/or Carrie G. Pugh to Willie E. Sheffield for and in consideration of the sum of Two Hundred Fifty Thousand and No/100's Dollars ($250,000.00) pursuant to an oral agreement heretofore agreed on between myself and Wiliie E. Sheffield. Should I acquire any additional interest in said properties whether by gift, inheritance or otherwise,

I hereby direct my Executors and Trustees to transfer said interest to Willie E. Sheffield for and in consideration of an amount equal to the per acre amount of the interest I own at the time of the execution of this my Last Will and Testament, as set forth above, times the number of acres acquired by be by gift, inheritance or otherwise after the execution of this my Last Will and Testament.

ARTICLE FIVE

I appoint Doris Anderson as Executrix, and James A. Tucker, Jr., as Co Executor of this my Last Will and Testament, and I direct that they shall be exempt from posting any bond, filing any inventory of the property coming into their hands and making any report to any Court of their proceedings hereunder.

I vest my said Executors with full power and authority to sell, transfer and convey any property, real or personal, which I may own at the time of my death, and to do everything and every other act necessary or appropriate for the complete administration of my estate.

I, LILLIAN P. ANDREWS, the testatrix, sign my name to this instrument this 2nd day of September, 1992, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 19 years of age or older, of sound mind, and under no constraint or undue influence.

/s/ Lillian P. Andrews
LILLIAN P. ANDREWS